

Formal Action #6233

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,

Plaintiff,

v.

PRO DESIGN & VENDING

TECHNOLOGIES, INC. A/K/A

MEDI-KWIK PLUS, a New

Hampshire Corporation,

Respondent.

PETITION

Charles W. Burson, Attorney General and Reporter for the State of Tennessee, (hereinafter "Attorney General"), files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Insurance and Commerce (hereinafter "the Division") and the Attorney General, acting pursuant to the Act, have investigated certain acts and practices of Pro Design & Technologies, Inc. A/K/A Medi-Kwik Plus, a New Hampshire corporation (hereinafter "Respondent"). Upon completion of such investigation, the Division has determined that certain of Respondent's acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-104(a), and further that such acts and practices constitute violations of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27).

2. Based upon their investigation of Respondent, the Division and the Attorney General allege the following:

(A) Respondent was at all times relevant to this Petition, in the business of promoting its business opportunity, namely selling machines which dispense pre-packaged, over-the-counter medicines and providing the medicines to go into those machines.

(B) A representative of Respondent attended the Franchise/Exhibition Show at the Nashville Convention Center on Broadway on October 27, 1996.

(C) During his presentation at that show, the representative of Respondent stated that someone buying the business opportunity could earn \$94,000.00 per year by working one day a month if the person had fifty vending machines. He stated that the machines would only have to sell three units per day to make a net profit. He did not indicate how likely it would be that someone could place that many machines or that the machines could be serviced in the time interval required to make the profits alleged.

(D) The representative also stated that there was no liability risk associated with the business because the "deep pockets", being the medicine makers, would be responsible for any personal injury claims as a result of taking the medicines dispensed by the machines.

(E) Finally, the representative stated that because this was a cash only business, its benefits were obvious.

(F) The materials handed out by the representative reinforced some or all of the statements made at the presentation.

(G) Respondent's conduct constitutes unfair and deceptive acts or practices in violation of the Tennessee Consumer Protection Act.

3. Respondent denies any wrongdoing. Respondent's position is explained more fully in Paragraph B of the Assurance of Voluntary Compliance submitted contemporaneously with this Petition.

4. Upon completion of its investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

5. The Attorney General entered into negotiations with Respondent and the parties have agreed to, and the Division has approved, the Assurance of Voluntary Compliance submitted contemporaneously with this Petition.

6. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

7. The Division, the Attorney General, and the Respondent, the parties who are primarily interested in the matters set forth in Paragraph 2 above, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.